



[BILLING CODE 9111-14]

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Valves

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain valves to be offered to the U.S. Government under an undesignated government procurement contract. The final determination found that based upon the facts presented, the country of origin of the subject valve is the United States.

DATES: The final determination was issued on June 14, 2013. A copy of the final determination is attached. Any party-at-interest as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of [insert date of publication in the **Federal Register**].

FOR FURTHER INFORMATION CONTACT: Fernando Peña, Esq., Valuation and Special Programs Branch, Office of International Trade; telephone (202) 325-1511.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 14, 2013, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain valves to be offered to the U.S. Government under an undesignated government

procurement contract. The final determination, Headquarters Ruling Letter H233698, was issued at the request of Omni Valve Company, LLC, under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. §§ 2511-18).

In the final determination, CBP concluded that, based upon the facts presented, the assembly in the United States of an automatic differential thermal relief system ("ADTR") into an imported valve body to create the subject "Omni Double Block & Bleed Valve" substantially transformed the foreign body valve into a product of the U.S. for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: June 14, 2013.

Sandra L. Bell,
Executive Director,
Regulations and Rulings,
Office of International Trade.

Attachment

HQ H233698

June 14, 2013

OT:RR:CTF:VS H233698 FP

CATEGORY: Marking

Mr. Richard O. Wolf
Moore & Lee, LLP
1650 Tysons Boulevard, Suite 1150
McLean, VA 22102-4225

RE: U.S. Government Procurement; Final Determination; Country
of origin of valves; substantial transformation;
19 CFR Part 177

Dear Mr. Wolf:

This is in response to your letter on behalf of Omni Valve Company, LLC (hereinafter "Omni"), in which you seek a final determination pursuant to subpart B of Part 177, Customs Regulations, 19 CFR 177.21 et seq. Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended, (19 U.S.C. § 2411 et seq.), U.S. Customs and Border Protection ("CBP") issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the Omni Double Block & Bleed Valve, a plug-type valve sold as the "OmniSeal DBB", which Omni is considering selling to the U.S. Government. We note that Omni is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

According to your submission and information provided by Omni, the "OmniSeal DBB" ("DBB") is a plug-type valve often used in fuel storage and disbursing systems. The DBB expanding plug

valve is designed for applications where positive shut-off, verifiable zero leakage and double block and bleed capabilities are required. It is a single valve solution that simultaneously blocks both the upstream and downstream flow while allowing the user to verify seal integrity using a manual or automatic body bleed system.

The valve body of the DBB is purchased by Omni in India and imported into the United States. The valve body is usable as an isolation valve. At Omni's Oklahoma facility, Omni fabricates and adds an automatic differential thermal relief system ("ADTR") to the imported valve. The ADTR system is a multi-joint, multi-instrument system with various elbow, needle valves and pressure gauges. Depending on the needs of the customer, there can be 30 different ADTR system components. One example of an ADTR consists of 10 separate Swedgeloc connections, 6 separate tub sections, 4 small valves, 2 tees and one check valve. The ADTR system is procured and fabricated in the U.S. This process involves bending pipe and attaching the connections and fittings. Some customers require all joints on the ADTR system to be welded. After the ADTR system is fabricated, it is installed onto the valve body of Indian origin.

It is claimed the ADTR allows the valve to be bled in order to test seal integrity in conformance to a prevailing industry standard. It is at this point, that the finished article is capable of being used for applications which require double isolation and bleed functionality.

ISSUE:

Whether the OmniSeal DBB valves are considered to be products of the United States for purposes of U.S. Government procurement.

LAW AND ANALYSIS:

Under subpart B of part 177, 19 CFR 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended ("TAA"; 19 U.S.C. 2511 et seq.), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C.
2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. See 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. See 48 C.F.R. § 25.403(c)(1). The Federal Procurement Regulations define "U.S.-made end product" as:

[A]n article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 C.F.R. § 25.003.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. Belcrest Linens v. Unites States, 573 F. Supp. 1149 (CIT 1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984). CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and

nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

CBP's predecessor agency, the U.S. Customs Service ("Customs"), previously found imported valve components to have been substantially transformed when used in the manufacture of finished valves. See Headquarters Ruling Letter ("HRL") [729335](#) (April 18, 1986); [HRL 731828](#) (January 30, 1990); and [HRL 558008](#) (November 16, 1994). In [HRL 729335](#) dated April 18, 1986, Customs found that a substantial transformation had taken place when finished body castings and bonnet castings were combined in the U.S. with valve stems, discs, disc screws and handwheels to produce complete plumbing valves. In [HRL 731828](#) it was determined that the production of ball valves using foreign valve bodies and bonnets combined with U.S. origin balls, seats, stems, and various seals and washers effected substantial transformation of the foreign materials. Finally, in [HRL 558008](#) Customs considered the assembly of water system valves using imported valve body castings and other internal components. It was concluded that an assembly entailing the installation of various subassemblies, gaskets, bolts, seals and other parts resulted in substantial transformation of the imported components.

It is our conclusion that the assembly operations carried out by Omni on the imported components are closely comparable to those considered in the rulings cited. The number of parts assembled, including significant numbers of U.S.-origin parts, and the relative complexity of the operations carried out, indicate that the imported components have undergone a substantial transformation by reason of the operations carried out in the United States. Accordingly, the finished DBB will be considered a product of the United States for purposes of U.S. Government procurement in making this determination.

HOLDING:

On the basis of the information provided, we find that the assembly in the U.S. substantially transforms the components of foreign origin in DBB valves with an ADTR system. Therefore, the country of origin of Omni's DBB is the United States for purposes of U.S. Government procurement.

Notice of this final determination will be given in the Federal Register as required by 19 CFR 177.29. Any party-at-

interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell
Executive Director,
Regulations and Rulings,
Office of International Trade

[FR Doc. 2013-15357 Filed 06/26/2013 at
8:45 am; Publication Date: 06/27/2013]